

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1955 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE J.R.VORA****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT - Appellant(s)**Versus****PATEL ASHOKBHAI BHAKTIBHAI & 2 - Opponent(s)**

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Appearance :

MR IM PANDYA for Appellant(s) : 1,

MR PANKAJ K SONI for Opponent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA**and****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA****Date : 16/04/2007****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE J.R.VORA)**

1. This criminal appeal is preferred by the State

against the judgment and order of acquittal delivered by the learned Addl. Sessions Judge, Mehsana in Sessions Case No. 55 of 2003, whereby three accused came to be acquitted by the trial Court for the offence punishable u/ss 313, 498(A), 504, 506 (2) and 114 of the I. P. Code.

2. As per the prosecution case, victim Nitaben had married to the accused NO.1 - respondent No.1 Patel Ashokbhai Bhaktibhai before 4 months of filing of the complaint i.e. 12-7-2002 before the Police Inspector, Vijapur Police Station. Nitaben filed a complaint that after her marriage with the accused No.1, she was staying with her in-laws at village Nava Fudeda. Her mother-in-law Madhuben - accused No.3 and father-in-law - Bhaktibhai Joyatabhai had been residing with her. It was stated by her that during this period the accused were executing cruelty because she belonged to "Vaghari" community and therefore she was not desired by her husband and in-laws. She stated in her complaint that her husband and in-laws were taunting her that she belonged to that particular community and she was threatened to kill. She stated that for the last two months she was pregnant and with *mala fide* intention to drive her out of the house without her consent she was taken to Vijapur Hardik Hospital where Dr. Goswami caused abortion of her and thereafter she was driven out by her in-laws. She was staying along with her sister Chandrikaben at Hathipura at the time of filing complaint.

3. From the above complaint, crime came to be registered against all three respondents and investigation was carried out by P.W. 5 Kantibhai Purushotamdas Patel Exh. 18 and charge sheet came to be filed against all the three accused in the Magistrate Court. The case was committed to the Sessions Court and was registered as Sessions Case No.55 of 2003. The charge for the above stated offences came to be framed by the learned Addl. Sessions Judge vide Exh.4 on 4-3-2004 to which the accused - respondents pleaded not guilty.

4. The prosecution examined in all five witnesses to prove its case.

5. P.W. 1 Dr. Bipinkumar Karshandas Solanki Exh.11 stated that on 12-7-2002 he was serving as Medical Officer at Vijapur and complainant Nitaben was brought to him along with police 'yadi'. She was examined by him at 1-20 at night in the hospital. Nitaben stated that before three days her mother-in-law i.e. Accused No.3 pushed her with door of the house and her husband as well as her father-in-law also abetted her mother-in-law and she was dragged by all the accused and caused her abortion before six days. The witness stated that she had complaint about bodily pain. She had no ostensible marks of injury and no blood was present. She was referred to Civil Hospital at Mehsana and in this respect he produced medical certificate Exh. 12. He was cross-

examined by the defence.

6. P.W. 2 Dr. Hasmukhbhai Mohanbhai Goswami has been examined at Exh. 13 by the prosecution. He deposed that he was a private medical practitioner. On 4-7-2002 complainant Nitaben had come with complain of pain in abdomen and bleeding. She was accompanied by her husband and was pregnant and it was found that she had miscarried and therefore curetting was performed on her. The witness further stated that he had obtained written consent of Nitaben before performing curetting. He produced on record medical certificate Exh. 14. The consent which he obtained of Nitaben is produced at Exh. 15 where Nitaben has subscribed her thumb mark. According to the witness, on examination her uterus was found swelling and it was bleeding. From the report of sonography it was detected that she had a miscarriage and therefore by way of treatment curetting was performed. After two to three hours she was discharged. The witness further stated that foetus was not fully developed and can be termed in medical terminology as "blighted ovum". In the cross-examination he has stated that in absence of curetting on account of bleeding serious physical damage to the complainant was likely. He stated that on account of use of unregonised medicine miscarriage can be caused.

7. P.W. 3 Nitaben complainant is examined at Exh.16. She stated the facts of the complaint. She

also stated that she had pregnancy of 2 ½ months. She was first taken to private nursing home at Fudeda village and the doctor gave injection and pills and thereafter she was taken to hospital at Vijapur and the doctor had asked her as to what happened to her and she replied that she was vomiting and she was not able to take food. The doctor had administered one injection to her and thereafter she did not feel anything. The doctor performed curetting. He asked to her in-laws that why her curetting was performed and her in-laws replied that she was to be driven out of the house as she belonged to 'vaghari' community. According to her, she was brought to the hospital by the accused and curetting was executed upon her and after curetting she was bed-ridden for 5 days but none was taking her care. She was bleeding and thereafter her mother was called and she was asked to take away moneys which were due. She stated that when her mother visited her in-laws, she along with her mother were driven out by the accused. In her cross-examination she denied the suggestion that she had taken some unrecognised medicines causing miscarriage. She denied the fact that along with her husband she had been to the Doctor at Vijapur as per her wish. She also denied the suggestion that on earlier day of filing of the complaint, she obtained divorce from the accused No. 1 in presence of the village persons. She denied the fact that she had stated this fact before the police in her further statement. She denied the suggestion that there were disturbances in her marriage life and both the

parties, therefore, had decided to separate by divorce. She denied the fact that she stated before the police that she had filed the complaint against the accused because the accused No. 1 was not making payment to her. She denied the fact that she stated before the police in her further statement that she obtained divorce on 11-7-2002 by consent of both the parties and she produced the affidavit filed by her as well as the deed of divorce. She was confronted with her complaint as well as further statement recorded by the investigating agency. In para 4 she admitted that at the time of the marriage with the accused No.1, it was decided that the accused No. 1 should have to pay Rs.27,000/- to her for this marriage and out of those Rs.27,000/-, Rs.12,000/- were paid by the accused No. 1 to her. Her mother demanded remaining amount of Rs.15,000/- from the accused. Instead of making payment, the accused No. 1 gave promises to pay. She denied the suggestion that on account of nonpayment of Rs.15,000/- by the accused No.1, she had filed the above said complaint.

8. P.W. 4 Savitaben Vinubhai Solanki is examined at Exh. 17. The mother of the complainant stated that she had in all six sons and daughters and Nitaben was at No. 3. She deposed the fact about the marriage and the fact she was called by in-laws of Nita at their place on the pretext of having banquet. When she visited in-laws, Nita was found sick and on inquiry she started crying and stated that she was forcibly subjected for

curetting and this was done because she was to be driven out of the house of her in-laws as she belonged to 'vaghari' community. In her examination in cross she stated her ignorance as to the statement before the police in respect whether Nitaben had visited her house and had complained about ill-treatment by her in-laws. She admitted that some amount was to be taken from the accused No. 1 on account of marriage of Niaben. She denied the fact of divorce. She denied the suggestion that she had demanded Rs.25,000/- after divorce and on non-payment by the accused the aforesaid compliant came to be filed by her.

9. P.W. 5 Kantibhai Purushottamdas Patel is examined at Exh.18, who was the then Police Inspector, Vijapur Police station, and recorded the complaint of the complainant. He deposed that the complainant was sent to the hospital for examination. He took the investigation of the offence after registering the same and filed the charge sheet. In his cross-examination he corroborated the further statement given by the complainant. He admitted that in her

further statement the complainant had produced the deed of divorce executed on 11-7-2002 and the affidavit filed by her denoting the consent. He admitted that in her further statement the complainant stated before him that nobody had forced her to go for curetting but on account of consent the divorce deed which was executed between the parties, she had given consent for divorce. This is all the evidence of the prosecution.

10. The prosecution also produced on record the medical certificate issued by the Medical Officer, Vijapur at Exh.12, Medical Certificate issued by Dr. Hasmukhbhai at Exh. 14. The consent letter of the complainant given to Dr. Hasmukhbhai is at Exh.15 and the complaint is at Exh.59.

11. Supporting the judgment and order of the learned trial Judge, learned A.P.P. Mr. Pandya vehemently submitted that in view of the depositions of P.W. 3 Nitaben Exh. 16 and P.W.4 Savitaben Vinubhai Solanki Exh.17, it becomes at least clear that the complainant was ill-treated by her in-laws i.e. the accused amounting to cruelty within meaning

of Sections 498(A) of the I.P. Code. It is submitted that Nitaben stated in her deposition that curetting was done without her consent. Learned A.P.P. further submitted that appreciation of the evidence undertaken by the trial Court is erroneous and this matter requires consideration.

12. This being the appeal against the acquittal u/s 378 of the Code of Criminal Procedure, 1973, we have carefully gone through record and proceedings of the sessions case. We have called for record and proceedings from the trial court which is available with us and the learned A.P.P. has assisted us with other copies of the evidence and documents.

13. On our independent assessment of the evidence, it becomes clear that P.W. 3 Nitaben stated many things beyond complaint in her deposition. The main allegation which P.W. 4 Nitaben complainant as well as P.W. 4 Savitaben have mainly made against the accused is in respect of cruelty executed by the accused upon the complainant because she belonged to 'vaghari' community. According to

the prosecution case, curetting was forcibly performed upon her. It must be born in mind that the fact deposed by P.W.3 Nitaben and P.W. 4 Savitaben in respect of cruelty is inseparable from the fact of allegation of forcible curetting by P.W.2 Dr. Hasmukhbhai. The learned trial Judge after appreciating the evidence on record in paras 11,12, 13, 15, 16 and 17 has rightly concluded that the prosecution failed to prove the case against the accused in respect of cruelty within the meaning of Section 498(A) as well as in respect of abortion without consent of the complainant within the meaning of Section 313 of the Indian Penal Code.

14. We have also carefully examined the deposition of P.W.2 Dr. Hasmukhbhai Patel who is independent witness stated in clear terms that in fact there was no developed foetus in the pregnancy of the complainant and it was "blighted oram.. According to the doctor, this had caused miscarriage and bleeding had started. The medical opinion which he gave further is that in those circumstances curetting was absolutely necessary and in absence of that, the

physical condition of the complainant was likely to be seriously damaged. He deposed that curetting was performed by the consent of the complainant and he produced on record the consent letter at Exh. 15. Therefore, from this independent evidence, it is clear that the say of the prosecution witnesses i.e. P.W. 3 Nitaben and P.W.4 Savitaben that she was ill-treated and was forcibly subjected to curetting is not credit worthy and reliable. Second important cause in arriving at the conclusion is the fact that before filing the compliant on very earlier day, the consent divorce was executed between the parties. Though P.W. 3 Nitaben and P.W. 4 Savitaben both denied this fact. From the deposition of Investigating Officer P.W. 5 Kantibhai Purushottambhai Exh.18 it becomes clear that the consent divorce was executed as aforesaid. Further, the fact was established that on account of marriage of Nitaben with the accused No.1 Ashokbhai, some amount was outstanding between the parties to be paid to the mother of complainant Nitaben by the accused No. 1 and that out of Rs.27,000/- to be paid to mother of the complainant, some amount has already been paid by the accused

No.1 while some amount was to be paid and that dispute was very well between the parties. It is further established from the evidence of the Investigating Officer P.W. 5 Kantibhai Purushotambhai Exh. 18 that curetting was performed firstly because the parties had decided to execute consent divorce deed and that it was decided to perform curetting by consent of the complainant because it was necessary and no force was used by any body. These prominent circumstances are established, from the evidence of the prosecution indicating beyond doubt that Nitaben filed the complaint perhaps because some financial settlement was pending between the parties. It is established by the evidence of the prosecution that the complainant was not subjected any force for curetting. Therefore, the question of charges levelled against the accused as to causing abortion without consent of the complainant would not arise. In the cross-examination P.W.4 Savitaben Vinubhai Solanki Exh. 17 pleaded her ignorance whether she was conveyed any cruelty or ill-treatment upon the complainant. In these circumstances and in totality of the facts disclosed by the prosecution evidence itself, we are unable to

find any exception with the reasoning and conclusions arrived at by the learned trial Judge.

15. Though we have undertaken exercise of thoroughly scanning the evidence and we also reach to the same conclusion as has been reached by the trial Judge even at this stage also. Therefore, the judgment and order of the trial court impugned in this appeal requires no interference. In the result, leave to appeal is refused. Appeal stands disposed of.

(J.R. Vora, J.)

(Bankim N. Mehta, J.)

/JVSatwara/